IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 3RD OCTOBER 2007 / 11TH ASWINA 1929

Crl.L.P..No. 894 of 2007()

ST.1760/2005 of JUDICIAL FIRST CLASS MAGISTRATE COURT -IV, NEDUMANGAD

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PETITIONER/COMPLAINANT:

M.A. SAJAD, S/O. MUHAMMED KHAN,
SURUMI MANZIL, PALLAM, KARIPOOR P.O.,NEDUMANGADU.

BY ADV. SRI.D.KISHORE

RESPONDENTS: ACCUSED & STATE:

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1. SHAJI @ SHAHABDEEN,
ASIAN HOLLOW BRICKS, KOLLAMKADAVU, PAZHAKUTTY P.O.
NEDUMANGADU.

2. STATE OF KERALA,
REPRESENTED BY ITS PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. PUZHAKKARA MOHAMMED - R2

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON 03/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. L.P. NO. 894 OF 2007

Dated this the 3rd day of October, 2007

O R D E R

This petition for special leave to appeal is filed against the judgment in S.T. No.1760 of 2005 on the file of the Judicial First Class Magistrate's Court IV, Nedumangad.

2. It is seen that inspite of the principles/ laid down by the Apex Court in the decision reported in **Narayana Menon v. State of Kerala, 2006(3) K.L.T. 404 (SC)**, the petitioner - complainant failed to prove that the signature contained in the cheque in question was that of the accused - first respondent. The very case set up by the accused right from the beginning was that there was no transaction between him and the complainant which led to the issuance of the cheque and that the cheque was not signed by him. The trial court also found that the complainant failed to prove that the accused had borrowed an amount of Rs.2,50,000/- from him. Even though the petitioner - complainant and another were examined as PWs.1 and 2 respectively and Exts.P1 to P9 were produced,

the complainant could not prove the transaction which led to the issuance of the cheque. The trial court also found that the cheque in question was dishonoured on the ground of difference in the signature. The petitioner ought to have taken steps to prove that the cheque was signed by the accused - first respondent. In the above circumstances, the finding entered by the trial court is justifiable and on facts and hence, requires no interference.

The Crl. Leave Petition is accordingly dismissed.

(K.THANKAPPAN, JUDGE)

sp/

K. THANKAPPAN, J.

CRL.A. NO.

JUDGMENT

SEPTEMBER, 2007